

1 A I'm sorry. Could you be a little
2 -- when you say "big pool," are we talking
3 about the big pool or a big pool for each
4 advertiser?

5 Q There is one big pool of marketing
6 funds for an advertiser that doesn't vary all
7 that much that everybody is picking at, sir.
8 Do you remember that?

9 A I'm sorry. As I said, those
10 budgets will vary during the course of the
11 year.

12 Q They will vary somewhat, but
13 generally --

14 A In some cases very significantly.

15 Q But for all intents and purposes,
16 they are finite, are they not, sir?

17 A If I understand the definition of
18 "finite," I guess you could say that they are
19 finite.

20 Q Well, in fact, sir, I can show you
21 your testimony, but when I asked you this
22 question at your deposition -- I'm just

1 quoting your words back.

2 A Okay. Well, I said if I
3 understand the definition of "finite," I will
4 -- yes, they -- ultimately, they're finite.

5 Q And you would agree, sir, that the
6 -- that when two networks don't have an
7 agreement between them not to compete, that
8 they are competing for every dollar even when
9 they are running the same sport, correct, sir?

10 A I'm sorry. Could you be a little
11 clearer with the question?

12 Q Let me put that a little
13 differently sir. I think you testified just
14 on direct that a lot of times advertisers
15 don't look just at their audience, they may
16 look at particular sports that they want to
17 associate themselves with, correct, sir?

18 A Absolutely.

19 Q So if a sport is showing a
20 particular kind of programming on one network,
21 and the advertiser may want to advertise with
22 support on that network, and also advertisers

1 that supported a different network, correct,
2 sir?

3 A That's correct.

4 Q Now, I want to go back into this
5 process of advertising and budgets. I believe
6 that -- well, strike that. You would agree
7 that advertisers allocate budget dollars by
8 day part, correct, sir?

9 A Some do, some don't.

10 Q On network TV, for example, day
11 parts include news, early morning, daytime,
12 evening news, prime time, late night, and
13 sports. Do I have the day parts down?

14 A In network television, that's
15 pretty much it.

16 Q And cable generally follows those
17 same day parts, do they not, sir?

18 A Not as rigidly as they do in
19 network television.

20 Q But in general, yes, sir?

21 A In a broad sense, yes.

22 Q And, in fact, a lot of advertising

1 budgets have line items that correspond with
2 those day parts, do they not, sir?

3 A Some do, some don't.

4 Q So an advertising budget that you
5 could find would have a line for daytime and
6 a line for prime time, and a line for sports,
7 correct, sir?

8 A As I said, some will and some
9 won't.

10 Q And the line for sports would have
11 a certain amount of dollars associated with
12 it, particularly -- what do you call the
13 beginning of the advertising season, sir?

14 A We usually think of the -- of the
15 television season as something that begins in
16 September and ends the following September,
17 and the buying season, if that's what you're
18 referring to, is the upfront market where we
19 are making the commitments for that 12-month
20 period.

21 Q And the upfront market -- I'm glad
22 you reminded me of that term, sir -- the

1 upfront market will usually have a certain
2 amount of dollars that the advertiser wants to
3 spend on sports programming. Is that correct,
4 sir?

5 A Not necessarily, no.

6 Q But in a lot of instances, the
7 advertiser will want to -- will allocate
8 dollars to the upfront spend on sports
9 programming, correct, sir?

10 A At that point in time, it is
11 usually sport-specific. So it would be, for
12 example, the -- I have a budget for the NFL,
13 I have a budget for college football.

14 Q And that would be for the larger
15 networks, correct, sir, but for smaller
16 advertisers it may be a sports line item
17 generally?

18 A Well, depending on how small,
19 small advertisers sometimes don't participate
20 in the up front, because they are not -- one
21 of the hallmarks of the up front is usually
22 that you are advertising for a 52-week -- a

1 good number of weeks over the full 52-week
2 period.

3 Smaller advertisers, who are not
4 advertising every quarter or to the same
5 degree, will oftentimes wait and buy time in
6 what is called the scatter market, which may
7 begin anywhere from four to six weeks prior to
8 the beginning of a quarter.

9 So, for example, the fourth
10 quarter, which historically begins in October,
11 the scatter market will begin sometime in
12 August.

13 Q Now, Mr. Goldstein, I want to
14 spend just a second or two with you on what --
15 the networks that are going to receive money
16 spent on sports. Now, I take it that ad buys
17 on The Baseball Channel will probably come
18 from budgets which were allocating money to
19 sports advertising, correct, sir?

20 A Either baseball specifically or
21 perhaps sports.

22 Q Or perhaps sports, because some of

1 them would not say baseball particularly, they
2 would just be into sports, sir, correct?

3 A Some will, some won't.

4 Q And some advertisers will have a
5 line item in there for The Golf Channel that
6 want to advertise on sports networks, correct,
7 sir?

8 A More likely they will have a line
9 item perhaps for Golf, not necessarily The
10 Golf Channel, and they will make a commitment
11 to golf that supports probably a network
12 telecast, and augment that network support
13 with Thursday and Friday coverage on The Golf
14 Channel.

15 Q Well, let me break down the
16 question a little bit differently. You would
17 agree with me that The Baseball Channel
18 primarily sells sports ads, wouldn't you, Mr.
19 Goldstein?

20 A Do you mean MLB?

21 Q Yes.

22 A Primarily to sports advertisers.

1 Q And you would agree with me that
2 The Hockey Channel primarily sells sports
3 advertising, wouldn't you, sir?

4 A In the grandest definition of
5 sports, if I may, I mean, it's not just beer,
6 for example, or whatever. I mean, McDonald's
7 is a corporate partner of the NHL. Kraft is
8 a corporate sponsor of the NHL. One of the
9 dilemmas that you have with multi-brand
10 companies -- Kraft for example, Unilever for
11 example -- is that they are going to run
12 different products and different things, and
13 it's very hard to classify them as any one
14 kind of an advertiser.

15 Q Well, I take that, sir, and my
16 question is a little different, which is that
17 I'm talking about what kinds -- advertisers
18 who are looking to buy advertising in sports
19 -- and I'm looking at which kinds of networks
20 they are going to be looking for, so I believe
21 that you've said that they would be looking
22 for Baseball Channel, because it sells sports

1 advertising, correct, sir?

2 A Well, remember, I also said that
3 we use sports as a proxy for men. So, yes,
4 MLB, NHL channels will deliver men. So will
5 other non-sports channels.

6 Q And ESPN, sir?

7 A Yes.

8 Q Tennis Channel, sir?

9 A I don't think -- we would not put
10 them in the same category.

11 Q Well, sir, now I asked you at your
12 deposition, "What networks do you believe sell
13 primarily sports ads?" Do you recall me
14 asking you that?

15 A No, I do not.

16 Q Would you like to see your
17 testimony, sir?

18 A Certainly.

19 MR. PHILLIPS: Okay. If I may,
20 Your Honor?

21 JUDGE SIPPEL: Yes, surely. Thank
22 you.

1 MR. PHILLIPS: Mr. Goldstein.

2 THE WITNESS: Thank you.

3 BY MR. PHILLIPS:

4 Q Now, Mr. Goldstein, if I can get
5 you to turn to page 79. I'm going to ask you
6 to start at line --

7 A I'm sorry.

8 Q -- line 10.

9 A I may be stupid, because I can't
10 find 79.

11 Q Page 79, sir.

12 JUDGE SIPPEL: Can somebody help?
13 Maybe Mr. Moss can give him assistance,
14 please.

15 THE WITNESS: I apologize.

16 MR. PHILLIPS: There are four
17 pages. They --

18 JUDGE SIPPEL: They go back --
19 they go on -- go ahead.

20 THE WITNESS: Oh, I'm looking at
21 -- I'm sorry. Okay. I'm with you. Line 10?

22 MR. PHILLIPS: Your Honor, are you

1 with me?

2 JUDGE SIPPEL: 79, right? I am.

3 That's where I be.

4 MR. PHILLIPS: All right.

5 BY MR. PHILLIPS:

6 Q I am starting at line 10, Mr.
7 Goldstein, and I asked you, "Do you understand
8 my question? I would like to know what -- my
9 question is, what networks do you believe sell
10 primarily sports ads?" Your answer was,
11 "Well, I define the network -- I'll give you
12 -- give examples of networks that are
13 primarily sports."

14 And I said, "Okay." And you
15 answered, "Okay. ESPN and the relative ESPN
16 networks are primarily sports, Major League
17 Baseball is primarily a sports network, NHL
18 Network is primarily a sports network, NBA
19 Network is primarily a basketball network and
20 sports network, Golf Channel is primarily a
21 sports network, Versus is primarily a sports
22 network, Tennis Channel is primarily a sports

1 network."

2 A Okay.

3 Q "I'm probably missing a couple,
4 but these are good examples of networks, as
5 opposed to MSOs, that are televising a
6 sporting events -- sports or sporting events
7 24/7." Do you see that testimony, sir?

8 A Yes, I do.

9 Q Did I read it correctly?

10 A You did.

11 Q And was that testimony accurate,
12 sir?

13 A Testimony was accurate.

14 Q Now, for a larger account like
15 General Motors, which you used to be in charge
16 of, the ad buying team would have a team lead
17 for each of the day parts, correct, sir?

18 A Yes, it is.

19 Q All right. Like a news lead, for
20 example, sir.

21 A Not specifically, because that was
22 part of the prime time person's

1 responsibility.

2 Q Right. And prime time was the day
3 part, correct.

4 A That's correct.

5 Q And they have a Sports League --

6 A Yes.

7 Q -- at General Motors.

8 A Yes, we did.

9 Q And the Sports League would be in
10 charge of negotiations for ad time on the
11 sports networks, correct, sir?

12 A As I indicated, our planning for
13 General Motors was sport-specific. And, quite
14 frankly, many of these networks did not exist
15 at the time that we were doing the General
16 Motors buying. So there was no NFL Network to
17 even consider at the point in time that we
18 were negotiating NFL inventory, but it would
19 have been because it was an NFL budget, not
20 because it's a sports budget.

21 Q I'm sorry, sir. Let me try and --
22 if I can get my question again, because I'm

1 not sure we connected on that. The Sports
2 League at General Motors was in charge for the
3 negotiations for ad time on sports networks,
4 to the extent they existed, correct, sir?

5 A I'm sorry. I think our disconnect
6 is I keep coming back to individual sports,
7 because that individual would buy the NFL on
8 CBS and the NFL on Fox. Those are not sports
9 networks. So their responsibility was to
10 execute against the sport-specific budget.

11 Q And in that sport-specific budget
12 they would look at networks that were showing
13 sports, correct, sir?

14 A Assuming that the media plan
15 called for that sport, yes, they would.

16 Q Now, you have also -- I believe,
17 sir -- well, let me change focus. What about
18 the seller side, sir? Some large media
19 companies divide ad sales responsibilities
20 also by day part or programming type, is that
21 fair?

22 A Yes, it is.

1 Q Okay. And they have a separate ad
2 sales group for sports?

3 A Yes, they do.

4 Q Turner, for example, has a
5 separate ad sales group for sports
6 advertising, doesn't it, sir?

7 A They do.

8 Q Okay. The broadcast networks have
9 separate ad sales groups for sports networks,
10 don't they?

11 A Yes, they do.

12 Q And Comcast also has a separate
13 group for selling sports advertising, doesn't
14 it, sir?

15 A Yes, they do.

16 MR. PHILLIPS: In fact, if I -- if
17 I may approach, Your Honor, I'd like to show
18 the witness an exhibit.

19 JUDGE SIPPEL: Yes.

20 MR. PHILLIPS: It's Tennis Channel
21 Exhibit 67, which I believe is in.

22 JUDGE SIPPEL: Thank you.

1 January 26, 2009, marked for identification,
2 if it's not in already. Does anybody know if
3 it's in? It is in?

4 MR. PHILLIPS: It is in.

5 JUDGE SIPPEL: We'll accept that.
6 It's already in evidence.

7 MR. PHILLIPS: Those low numbers,
8 Your Honor.

9 JUDGE SIPPEL: Oh, yes. Oh, yes.

10 BY MR. PHILLIPS:

11 Q Mr. Goldstein, I'd just like to
12 point your attention to this for a second.
13 This is an article in the Sports Business
14 Journal. Are you familiar with that?

15 A Yes, I am.

16 Q And the headline is, "Comcast
17 Combines Versus and Golf Channel Sales
18 Effort," do you see that?

19 A Yes, I do.

20 Q And were you aware that Comcast,
21 at around this date, combined its national
22 sales team of Versus and Golf Channels under

1 the Comcast sports banner?

2 A Other than the exact date, yes.

3 Q Versus is a multi-sport network,
4 correct, sir?

5 A Correct.

6 Q And Golf Channel is a single sport
7 network, correct, sir?

8 A Yes, it is.

9 Q Do you see Mr. Cassaro, do you
10 know who he is?

11 A I do.

12 Q And who is he?

13 A He's the head of the Comcast sales
14 side of the cable networks.

15 Q And he said that there were
16 companies that already advertise across both
17 networks and that the multi-platform offering
18 has yielded more sales. Do you see that?
19 It's about four paragraphs up from the bottom?

20 A Yes, I do. I wouldn't expect him
21 to say anything else.

22 Q Do you think that they probably

1 realized some efficiencies from joining their
2 ad sales forces?

3 A I think there were probably some
4 internal cost reductions that they were able
5 to take, yes.

6 Q Do you disagree with Mr. Cassaro
7 when he says that there are companies that
8 advertise across both networks and the multi-
9 platform offering has yielded more sales?

10 A I have -- I would not be a bit
11 surprised.

12 Q Now, you agree, do you not, Mr.
13 Goldstein, that advertisers make buying
14 decisions based on the audience that they want
15 to reach, isn't that correct, sir?

16 A I think that's one of the factors
17 that we, as advertising buyers, look at. We
18 look at the number of viewers, we look at the
19 cost, we look at the efficiency of reaching
20 that audience, we look at the age, we look at
21 sex. There are innumerable factors that we
22 look at. There is no single one factor that

1 creates a final decision.

2 Q Well, you look at demographics,
3 isn't that true, sir?

4 A We look at the demographics, yes.

5 Q And demographics is in fact a very
6 -- is a very important factor for you in the
7 sale of advertising, is it not, sir?

8 A It can be.

9 Q And also the size of the audience,
10 isn't that right, sir?

11 A And the cost associated with that.

12 Q Now, if I wanted to reach a male
13 audience in the 18 to 49 age range, I would
14 look -- I would consider buying ads on the
15 sports network, correct, sir?

16 A Depends on which one.

17 Q Well, sir, are you saying that, as
18 a general matter, the 18 to 49 age range is
19 not a good age range to look at for sports?

20 A No, it's an excellent age range.
21 But there are some sports, for example, like
22 the NBA and the NHL, which have a younger skew

1 to their audience, even within the 18 to 49
2 category, than other sports. So I would look
3 at the season that I'm advertising, the
4 product that I'm advertising.

5 Again, I don't mean to make this
6 overly complex, but there are more than one
7 criteria that you have to look at beyond
8 simply that something fits in an 18 to 49
9 category.

10 Q I understand, sir, that you may
11 look at more criteria than that. But if I
12 wanted to reach that 18 to 49 audience, if
13 that was my target audience, I might look at
14 sports, wouldn't I, sir?

15 A Just one caveat. We are talking
16 males 18 to 49, correct?

17 Q We are, sir.

18 A Yes.

19 Q Sir, "skews male" is an industry
20 term, is it not?

21 A Probably.

22 Q Didn't you tell me that at your

1 deposition, sir?

2 A Most probably.

3 Q And you would agree that Golf
4 Channel tends to skew male, sir, wouldn't you?

5 A I would say that golf skews male,
6 and we have Nielsen ratings that tend to
7 indicate that The Golf Channel skews male.

8 Q And would you agree that a channel
9 that delivers three men for every -- three men
10 for every two women also skews male, sir?

11 A Yes, it does. As I said before,
12 the question is degree.

13 Q Let's talk about affluent viewers
14 for a second, sir. I take it that there are
15 a lot of companies that would like to reach
16 affluent viewers, correct, sir?

17 A My hesitation is only in quibbling
18 with your question of "a lot." I don't know
19 that there are a lot, but there are many that
20 certainly are looking to reach affluent
21 viewers.

22 Q Well, there are some -- there are

1 some terrific advertising prospects who are
2 trying to reach affluent viewers. Do you
3 disagree with that?

4 A No. But I think you used -- I'm
5 sorry, you used that in a very general sense.
6 I mean, if you look at a lot of the packaged
7 goods companies, okay, they -- who are the big
8 spenders in television today, they are not
9 necessarily looking for an affluent group.

10 If you are looking at financials,
11 if you are looking at credit cards, if you are
12 looking at banks, it's a different story. So
13 to use a sweeping term is difficult to just
14 latch onto.

15 Q Mr. Goldstein, let me ask you, do
16 you think that Golf tries to reach affluent
17 viewers?

18 A I think the advertisers who are
19 buying time in golf look at that, and that's
20 one of the criteria.

21 Q And do you think that the
22 advertisers buying in Tennis also are looking

1 for affluent viewers?

2 A I think the same thing holds true
3 for that single area of commonality.

4 Q So when it comes to Golf and
5 Tennis, you said they are alike in that they
6 are both trying to seek affluent viewers among
7 their audience?

8 A Yes.

9 Q Now, you also agree that channels
10 may have very different content, and,
11 nonetheless, compete for advertising, is that
12 not -- is that true, sir?

13 A Yes.

14 Q If they have similar demographics,
15 they may very well be competing for
16 advertisers, even though the program content
17 is very different, correct, sir?

18 A That's correct.

19 Q So that, for example, the NFL
20 network and NBA TV, you've got two different
21 sports, compete against each other in the same
22 sport consideration set for advertisers, is

1 that fair?

2 A Not really.

3 Q Well, sir --

4 A And if I may just explain that,
5 okay --

6 Q Well, sir, before you explain, can
7 I ask you to look at your testimony on page
8 113?

9 JUDGE SIPPEL: Are you doing
10 better with the system now, Mr. Goldstein?

11 THE WITNESS: Got it, yes. I
12 didn't realize that the two columns
13 represented two different page numbers.

14 BY MR. PHILLIPS:

15 Q And I'd like to read to you from
16 lines 13 through 24, sir. So I asked you the
17 question, "What about the NFL Network and NBA
18 TV, are you familiar with those two networks?"
19 And you said, "Reasonably, yes."

20 I asked you, "Do you think that
21 they compete for advertising dollars?" Mr.
22 Toscano objected. And then you said, "I think

1 they compete in the same -- compete in the
2 sports consideration set with other sports-
3 related networks." Do you see that, sir?

4 A Yes, I do.

5 Q Okay. Did I read that correctly,
6 sir?

7 A You did.

8 Q And that was accurate at the time
9 you said it, sir?

10 A Yes, it was.

11 Q Thank you. And, in fact, one
12 network could have only golf and the other
13 network could have only tennis. But if they
14 were targeting the same audience and pulled in
15 the same audience, they would still compete,
16 right, sir?

17 A I'm sorry. Could you repeat that,
18 please?

19 Q If one network had golf, and one
20 network had tennis, but if they reached the
21 same audience, you would not be surprised if
22 they competed for advertising dollars, would

1 you, sir?

2 A Along with other factors I would
3 look at as well as other alternatives. They
4 would be part of the set.

5 Q Your view is that -- your view of
6 the set that is competing with each other
7 really has to do with what demographic they
8 are competing for, is that fair?

9 A Again, it's one of the criteria.
10 You have to look at seasonality as well. The
11 reason that I reacted to the NFL and NBA is
12 they don't have really common seasons.

13 Q But, sir, let me ask you a
14 question. In general, your view of the set
15 that is competing with each other really has
16 to do with what demographic they are competing
17 for, is that fair, sir?

18 A That's one of the criteria.

19 Q Well, sir, let me -- again, let me
20 ask you to turn to page 114, because I'm just
21 trying to understand. In line 12 to 22, now
22 -- are you there, sir?